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JAN 17 1983

OFFICE OF THE CLERK
SUPREME COURT, U.S.

1 Gilbert William Becker, C-09899
2 C.R.C. W/C #45
2 P. O. Box 3535
Norco, Ca. 91760
3 IN PROPRIA PERSONA

No. 82 6054

SUPREME COURT OF THE UNITED STATES

October Term, 1982

10 GILBERT WILLIAM BECKER,
11 Petitioner/Appellant,

12 vs

13 ROBERT E. DORAN, Superintendent,
California Rehabilitation Center,
14 Respondent/Appellee.

} 9th Cir. No. 81-5571
D.C. No. CV-81-42-EJS

JURISDICTIONAL STATEMENT

This institution's law library contains no Federal practice books that have an outline of what the format is for a jurisdictional statement, so the Courts indulgence is requested to accept this statement or to please appoint counsel to properly prepare same.

Your Court has jurisdiction per 28 U.S.C., Section 1254.

QUESTIONS PRESENTED:

1. Must the Court of Appeals fully review the Record on Appeal as stated in their prior decision of PEMBROOK v. WILSON, 9th Cir. 1966, 370 F.2d 37, 40?

2. Does HAINES v. KERNER, (1972) 404 U.S. 519, 520; 92 S.Ct. 594; 30 L. Ed.2d 652, 654, have any real meaning for the indigent non-lawyer attempting to obtain the Constitutional right to due

process under the Fourteenth Amendment?

2 3. Can the lower Courts take the plain meaningful language
3 out of an argument made on a captioned issue and convert it to an
4 issue, while ignoring the Record on Appeal which contains specific-
5 ally headed subject matter sections of prior petitions outlining
6 issues and backed up by substantive arguments, but never mentioned
7 as an issue in the Petition for Habeas Corpus?

8 4. Do the exhibits attached to a Petition for Habeas Corpus
9 to the States Highest Court constitute an integral part of that
10 petition and should they be considered when examining the record
11 on appeal to determine the exhaustion of state remedies?

12 This appeal is from a Memorandum decision issued by Wallace,
13 Kennedy, and Hug, Circuit Judges, and from the order denying the
14 petition for a rehearing.

15 The exhibits attached hereto show the dates, issues, and
16 decisions in dispute.

In the interest of judicial economy and to obtain finality of judgments, your Court should establish specific guidelines to the lower Courts for dealing with the issues outlined in the questions stated herein.

Exhibits attached are: (1) Memorandum decision, (2) Petition
for Rehearing, and (3) the order denying petition for rehearing.

Respectfully submitted,

Gilbert William Becker
Petitioner/Appellant

1 GILBERT WILLIAM BECKER, C-09899
2 California Rehabilitation Center
3 P. O. Box 3535, W/C #45
4 Norco, California, 91760
5 IN PROPRIA PERSONA

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9 UNITED STATES COURT OF APPEALS
10 FOR THE NINTH CIRCUIT

11 GILBERT WILLIAM BECKER,
12 Petitioner/Appellant,

13 vs

14 ROBERT E. DORAN, Superintendent,
15 California Rehabilitation Center,
16 Respondent/Appellee.

17 } No. 81-5571
18 } D.C. No. CV-81-42-EJS

19 NOTICE OF APPEAL

20

21 Notice is hereby given that the petitioner above named, hereby
22 appeals to the SUPREME COURT OF THE UNITED STATES from the Mem-
23 orandum filed November 17, 1982, and the ORDER denying the petition
24 for a rehearing filed December 28, 1982.

25 The appeal is based on your Courts failure to properly apply
26 the existing Rules of reviewing the Record on Appeal and misapply-
27 ing the plain wording of the petitions and failing to follow the
28 dictates of HAINES v. KERNER, (1972), 404 U.S. 519, 520; 92 S.Ct.
594; 30 L.Ed.2d 652, 654, and 28 U.S.C.S. Section 1254.

29 Executed on January 6, 1983 at C.R.C. Norco, California.

30 Respectfully submitted,

31 *Gilbert William Becker*
32 Gilbert William Becker,
33 Petitioner/Appellant

FILED

UNITED STATES COURT OF APPEALS NOV 17 1962

**FOR THE NINTH CIRCUIT PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS**

GILBERT WILLIAM BECKER,)	
Petitioner-Appellant,)	No. 81-5571
v.)	D.C. No. CV-81-42-EJS
ROBERT E. DORAN, Superintendent, California rehabilitation center,)	
Respondent-Appellee.)	<u>MEMORANDUM</u>

Appeal from the United States District Court
For the Southern District of California
The Honorable Edward J. Schwartz, Presiding
Submitted June 28, 1982*

Before: WALLACE, KENNEDY, and HUG, Circuit Judges.

Gilbert Becker, convicted in California Superior Court of first degree murder, appeals from the district court's denial of his petition for habeas corpus. Among the issues raised in Becker's petition is one that is unexhausted in the state courts. The district court considered only the exhausted issues and denied relief. The district court instead should have dismissed Becker's entire petition because it contained an unexhausted claim. Rose v. Lundy, 102 S.Ct. 1198, 71 L.Ed.2d 379, 390 (1982).

One of Becker's claims is that the evidence was insufficient to support a first degree murder conviction. The mainstay of this claim is his argument that inculpatory statements were obtained from him by coercion and admitted into evidence in violation of the fifth amendment. This fifth amendment argument was made in the state trial court, but was neither raised on direct appeal nor in Becker's state habeas corpus petition. Because this claim can still

*The panel is unanimously of the opinion that oral argument is not required in this case. Fed. R. App. P. 34(a).

1 be raised in the state courts through a petition for habeas
2 corpus, see Cal. Penal Code § 1473, it is not exhausted.
3 Rose v. Lundy states "that a district court must dismiss
4 habeas petitions containing both unexhausted and exhausted
5 claims." 71 L.Ed.2d at 390. Whether failure to pursue this
6 issue on appeal in the state court constitutes a procedural
7 default, which precludes collateral review under state law,
8 is a matter for determination by the state courts. Until
9 the state courts have denied the petition, either on the
10 merits or on procedural grounds, the claim based on the
11 fifth amendment remains unexhausted.

12 Accordingly, we remand to the district court so that it
13 may dismiss Becker's petition for habeas corpus.

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10 UNITED STATES COURT OF APPEALS
11 FOR THE NINTH CIRCUIT

12 GILBERT WILLIAM BECKER,)
Petitioner-Appellant,)
13 VS)
14 ROBERT E. DORAN, Superintendent,)
California Rehabilitation Center,)
15 Respondent-Appellee.)
16)
17)
18 PETITION FOR REHEARING
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

No. 81-5571

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT:

Petitioner petitions this Honorable Court for a rehearing
based on the following: PURPOSE.

This petition is based on a material fact overlooked
in the memorandum decision.

The memorandum states that I failed to exhaust my fifth
Amendment rights argument in the California State Courts. The
argument raising the Fifth Amendment issue was stated in the
Supplemental Petition for a Hearing in the California Supreme Court,
on page 1, line 25 and on pages 6, 7, 9, 10, and 11.

1 The supplemental petition for a hearing was marked exhibit #4 and
2 attached to the traverse to the Attorney Generals reply and is part
3 of the record on appeal sent me by the District Court. Line 25 of
4 the aforesaid reads:

5 QUESTIONS PRESENTED

6 1. In the light of People v. Rucker, 26 C.3d 368
7 and Miranda v. Arizona, 16 L.Ed.2d 694, were
8 the statements made to the police and the
prosecutions psychiatrist properly admitted
as free and voluntary statements of the
defendant?

9 Nowhere in the amended petition to the District Court will
10 you find the Fifth Amendment raised as an issue!

11 I did mention the Fifth Amendment regarding the issue of
12 the insufficiency of the evidence on page 8, paragraph d, but it is
13 used only as an example of the lack of evidence at my trial.

14 The return to my petition filed by the California Attorney
15 General conceded that I had exhausted by state remedies. His return
16 did not address any issue regarding my Fifth Amendment rights.

17 Whenever the Fifth Amendment was mentioned in the District
18 and your Court, it was being used as an argument to show the in-
19 effectiveness of my trial and appellate counsel, by their not using
20 my Fifth Amendment rights issue. Please see pages 5, lines 17 to 23.
21 Also see page 8, lines 14 to 16, of my opening brief.

22 Petitioner respectfully requests that this Court grant this
23 petition for rehearing, because even if you say that the Fifth Amend-
24 ment is an issue, it has been presented to the California Supreme
25 Court.

26 Petitioner respectfully requests that the memorandum
27 decision be reversed and that the appeal be decided on the issues
28 presented and the merits.

1 Appellant hereby swears, under penalty of perjury, that to
2 the best of his knowledge and belief, all of the foregoing is true
3 and correct.

4 Executed on November 20, 1982 at Norco, California.
5

6 Respectfully submitted,
7

8 
9 Gilbert William Becker,
10 Petitioner-Appellant

11 CERTIFICATE OF SERVICE

12 On November 20, 1982, I served the within petition on the
13 interested parties in this action, by mailing a copy to the
14 following:

15 Robert Foster, Deputy Attorney General
16 Office of the Attorney General of Calif.
17 110 West "A" Street, Suite 700
18 San Diego, California, 92101

19 I declare under penalty of perjury that the foregoing is
20 true and correct.
21

22 Executed on November 20, 1982 at Norco, California.
23

24 
25 Gilbert William Becker,
26 Petitioner-Appellant
27
28

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

DEC 28 1982

GILBERT WILLIAM BECKER,

PHILLIP B. WINEBERRY
CLERK, U.S. COURT OF APPEALS

Petitioner-Appellant,

No. 81-5571

v.

D.C. No. CV-81-42-EJS

ROBERT E. DORAN, Superintendent,
California Rehabilitation Center,

Respondent-Appellee.

ORDER

Appeal from the United States District Court
For the Southern District of California

Before: WALLACE, KENNEDY, and HUG, Circuit Judges.

Reid on 12/31/82
G.W. Becker

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

DEC 24 1962

GILBERT WILLIAM BECKER,)	PHILLIP B. WILBERRY CLERK U.S. COURT OF APPEALS
Petitioner-Appellant,)	No. 81-5571
v.)	D.C. No. CV-81-42-EJS
ROBERT E. DORAN, Superintendent, California Rehabilitation Center,)	
Respondent-Appellee.)	<u>ORDER</u>

**Appeal from the United States District Court
For the Southern District of California**

Before: WALLACE, KENNEDY, and HUG, Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing filed by appellant on November 24, 1982.

The petition for rehearing is DENIED.

Received on 12/31/82
John Becker

1 GILBERT WILLIAM BECKER, C-09899
2 California Rehabilitation Center
3 P. O. Box 3535, W/C #45
4 Norco, California, 91760
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JAN 17 1983

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

No. 82 6054

10 SUPREME COURT OF THE UNITED STATES
11 October Term, 1982

12 GILBERT WILLIAM BECKER,
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14 vs.
15 ROBERT E. DORAN, Superintendent,
16 California Rehabilitation Center,
17 Respondent/Appellee.

18 Ninth Cir. No. 81-5571
19 D.C. No. CV-81-42-EJS

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

20 The petitioner, Gilbert William Becker, asks leave to file a
21 Notice of Appeal, wherein he is appealing the Memorandum Decision
22 filed November 17, 1982 from the Ninth Circuit Court of Appeals and
23 the Order denying the petition for a Rehearing filed December 28,
24 1982, without prepayment of costs and to proceed In Forma Pauperis,
25 under Rule 46 of the U. S. Supreme Court Rules, and 28 USC, Section
26 1915 (a).

27 The petitioner's affidavit in support of this motion is attached
28 Dated January 6, 1983.

Respectfully submitted,
Gilbert William Becker
Gilbert William Becker,
Petitioner/Appellant

GILBERT WILLIAM BECKER
(Petitioner) Appellant

ROBERT E. DORAN, SUPERINTENDENT, C.R.C.
(Respondent(s)) Appellee

DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

I, GILBERT WILLIAM BECKER, declare under penalty of perjury that the foregoing is true and correct; that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore and that I believe I am entitled to redress.

I further declare that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes X No _____

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

\$30.00 per month. Library, Education Department of California Rehabilitation Center, Norco, California
b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received, within the past twelve months, any money from any of the following sources?

a. Business, profession or form of self-employment? Yes No X
b. Rent payments, interest or dividends? Yes No X
c. Pensions, annuities or life insurance payments? Yes No X
d. Gifts or inheritances? Yes X No
e. Any other sources? Yes No X

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months.

Gifts from relatives

3. Do you own any cash, or do you have money in a checking or savings account? Yes X No (Include any funds in prison accounts)

If the answer is yes, state the total value of the items owned.

\$134.80 in prison trust account

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes No X

If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. NONE

I understand that a false statement or answer to any questions in this declaration will subject me to penalties for perjury.

Gilbert William Becker
(Petitioner's Signature)
Gilbert William Becker

State of CALIFORNIA.

County (City) of RIVERSIDE.

I, GILBERT WILLIAM BECKER declare under penalty of perjury that I have read and subscribe to the above and state that the information therein is true and correct.

Executed at C.R.C. Norco, California on January 6, 1983.

Gilbert William Becker
Signature of Petitioner
Gilbert William Becker

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ 103.00 on account to his credit at the CALIF. REHAB. CENTER institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said CALIF. REHAB. CENTER institution: NONE


Authorized Officer of Institution

CC -
Title of Officer

RECEIVED

JAN 17 1983

Office of the CLERK
SUPREME COURT U.S.

1 Gilbert William Becker, C-09899
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Petitioner/Appellant

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9th Cir. No. 81-5571
D.C. No. CV-81-42-EJS

17 CERTIFICATE OF SERVICE

18 I hereby certify that on January 6, 1983, one copy of the
19 Notice of Appeal and Jurisdictional statement were mailed, postage
20 prepaid to: Robert Foster, Deputy Attorney General
21 Office of the Attorney General of Calif.
22 110 West "A" Street
23 San Diego, Ca. 92101

24 CLERK, U.S. COURT OF APPEALS
25 P. O. Box 547
26 San Francisco, Ca. 94101

27 Clerk, U.S. District Court
28 Southern District of California
29 940 Front Street
30 San Diego, Cal. 92189

31 Executed under penalty of perjury at Norco, California.

32 *Gilbert William Becker*
33 Gilbert William Becker
34 Petitioner/Appellant

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2 California Rehabilitation Center
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32 Petitioner/Appellant

FILED

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2 FOR THE NINTH CIRCUIT PHILLIP B. WINBERRY
3 CLERK, U.S. COURT OF APPEALS

4 GILBERT WILLIAM BECKER,)
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6 v.) D.C. No. CV-81-42-EJS
7 ROBERT E. DORAN, Superintendent,)
8 California rehabilitation center,)
9 Respondent-Appellee.)
10) MEMORANDUM

11 Appeal from the United States District Court
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13 The Honorable Edward J. Schwartz, Presiding
14 Submitted June 28, 1982*

15 Before: WALLACE, KENNEDY, and HUG, Circuit Judges.

16 Gilbert Becker, convicted in California Superior Court
17 of first degree murder, appeals from the district court's
18 denial of his petition for habeas corpus. Among the issues
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21 exhausted issues and denied relief. The district court
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23 because it contained an unexhausted claim. Rose v. Lundy,
24 102 S.Ct. 1198, 71 L.Ed.2d 379, 390 (1982).

25 One of Becker's claims is that the evidence was insuf-
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27 mainstay of this claim is his argument that inculpatory
28 statements were obtained from him by coercion and admitted
29 into evidence in violation of the fifth amendment. This
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10 merits or on procedural grounds, the claim based on the
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